

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 1 of 26

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE OFFICE OF PETITIONS

In re Patent Application of:
Cindy KOHANEK et al.

Customer No.: 07278

Application No.: 09/904,425

Confirmation No.: 1776

Filed: July 12, 2001

Art Unit: 2859

For: LINEARITY MEASURING APPARATUS
FOR WAFER ORIENTATION FLAT

Examiner: G. Bradley Bennett

Attorney Docket No.: 21223/0211061-US0

Abandoned: January 4, 2003

In re Patent Application of:
Kazuhiro HARADA et al.

Customer No.: 07278

Application No.: 09/718,659

Confirmation No.: 2444

Filed: November 22, 2000

Art Unit: 1775

For: SILICON WAFER AND METHOD FOR
MANUFACTURING THE SAME

Examiner: Stephen J. Stein

Attorney Docket No.: 21233/0211060-US0

Abandoned: July 1, 2003

DECLARATION OF MASAYOSHI SUDA

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

I, **MASAYOSHI SUDA**, hereby declare and state as follows:

I. PERSONAL AND PROFESSIONAL BACKGROUND

1. I am a citizen of Japan and am more than twenty-one (21) years of age;

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 2 of 26

1 2. I was born in February 1944. Under Japanese standards, I acquired the
2 qualifications to become a Japanese patent attorney in December 197 and a Japanese
3 patent attorney litigator in January 2008;

4 3. I graduated in March 1966 from Gunma University, Faculty of Engineering
5 (Textile Engineering), with a Bachelor of Engineering degree. I attended a practical seminar
6 held by the JAPAN PATENT ATTORNEYS ASSOCIATION from early January 1980 to early
7 February 1980, where I learned about Japanese prosecution and the handling of Patent,
8 Utility Model, Design, Trademark, and Litigation matters, as well as introductory information
9 concerning foreign patent prosecution of such matters;

10 4. In about April 1966, I joined THE JAPAN WOOL TEXTILE CO., LTD in Hyogo
11 Prefecture, Japan. I received initial training at its institute from April through June 1966,
12 worked at the Kakogawa Factory in Hyogo Prefecture as a technical staff member of the
13 wool textile finishing section from July 1966 through March 1971, and worked at the
14 Ichinomiya Factory in Aichi Prefecture as a subsection chief of the wool textile finishing
15 section from April 1971 through March 1978;

16 5. Due to my determination to qualify as a Japanese patent attorney and take
17 the appropriate examination for that position, as well as the reality of the then growing
18 economic decline in Japan that caused THE JAPAN WOOL TEXTILE CO., LTD. to lay off
19 employees, I began to work in April 1978 at Company headquarters in Hyogo Prefecture as
20 a technical staff member of the technology department;

21 6. In December 1979, I passed the examination to become a Japanese patent
22 attorney. The examination required, among other things, knowledge of Japanese Laws
23 (Patent, Utility Model, Design, and Trademark), as well as details of the Paris Convention

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 3 of 26

1 and PCT practice. The examination did not require any knowledge of foreign prosecution
2 matters, such as matters before the U.S. PTO;

3 7. In March 1980, I quit THE JAPAN WOOL TEXTILE CO., LTD to put my
4 knowledge of Intellectual Property ("IP") matters to practical use. In April 1980, I joined the
5 IDE PATENT OFFICE at Nerima ward in Tokyo, where I worked with two Japanese patent
6 attorneys and eight paralegals supporting our work;

7 8. From about April 1980 through June 1983, my work at the IDE PATENT
8 OFFICE included prosecution matters before the Japan Patent Office ("JPO") as a Japanese
9 patent attorney. My work in this regard was mainly for such Japanese clients as Hino
10 Motors Ltd., Mitsubishi Materials Corporation ("MMC"), and NEC Corporation. Mr. Ide, the
11 founder of the IDE PATENT OFFICE, worked on prosecution matters before the JPO and
12 foreign patent and trademark offices, including the U.S. PTO. My work at that time involved
13 very little, if any, prosecution matters concerning any foreign patent offices;

14 9. In June 1983, I left the IDE PATENT OFFICE to work independently in the IP
15 field;

16 II. THE SUDA PATENT OFFICE

17 10. In or about July 1983, I founded the Japanese Patent Law Firm called the
18 SUDA PATENT OFFICE ("SPO"), whose present address is Oak Ikebukuro Bldg 7F.21-11,
19 Higashi-Ikebukuro 1-chome, Toshima-ku, Tokyo 170-0013 Japan Tel 81-3-3988-4326 Fax
20 81-3-3986-4443. My present e-mail address is suda@suda-pat.com;

21 11. In the early years of SPO (from about 1983 to 1999), SPO was physically
22 located within the KAWAKAMI PATENT OFFICE ("KPO") in Minato ward, Nishi-shinbashi, in
23 Tokyo. Mr. Kawakami, the founder of KPO, invited me to join his firm and to rename it in the

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 4 of 26

1 future as the KAWAKAMI & SUDA PATENT OFFICE. Mr. Kawakami used to work as a
2 Chief of the Wool Spinning Section in the Kakogawa Factory of the JAPAN WOOL TEXTILE
3 CO., LTD., where he gave me considerable advice, at that time, which helped me acquire
4 the qualifications to become a Japanese patent attorney;

5 12. In the general timeframe of about July 1983 to about March 1986, my work at
6 SPO included only prosecution matters, with my wife as my only assistant. At that time, my
7 main clients were Hino Motors Ltd and MMC who, based upon my understanding, followed
8 me to SPO because they were very pleased with my work at the IDE PATENT OFFICE. My
9 main work during this time period was to file patent applications, utility model applications,
10 and trademark applications with the JPO. In 1985 and 1986, the number of Japanese
11 patent applications handled by SPO grew to more than about 100, compared with 59 in
12 1984;

13 13. In about 1984 MMC asked me to file several foreign patent applications, i.e.,
14 applications outside of Japan, including U.S. applications. As a result, Mr. Kawakami was
15 kind enough to introduce me to a Mr. Jules Goldberg as a representative U.S. patent
16 attorney for work before the U.S. PTO, in addition to other foreign patent attorneys. This
17 work for MMC was the first time I was ever involved in the filing of U.S. patent applications
18 before the U.S. PTO;

19 14. I moved the physical operations of SPO from the offices of KPO in about April
20 1986 to a new office location in the Toshima ward, Ikebukuro (Tokyo);

21 15. At this new location, I eventually hired another assistant in about April 1987 to
22 share the clerical work with my wife. This was my first SPO employee other than my wife,
23 which brought my total staff at that time to two -- other than myself;

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 5 of 26

1 16. In about April 1988, I built a computerized database management system by
2 myself as a docketing system for SPO, using Japanese relational database software called
3 "KIRI," in which relevant data were entered for only Japanese patent and trademark
4 applications handled by SPO. We have continued to improve this SPO Japanese docketing
5 system to this day;

6 17. Generally speaking this docketing system, for Japanese applications only,
7 included such information as the application filing date, application filing number, applicant
8 name(s), invention title, inventor name(s), mailing date of JPO office actions, due dates of
9 responses to JPO office actions, filing dates of responses to JPO office actions, application
10 registration date, application register number, etc.;

11 18. On the basis of this Japanese docketing system, we started to inform SPO
12 clients of certain information about their Japanese patent applications from system data.
13 For instance, as due dates for responses to JPO office actions became near, we informed
14 SPO clients of the dates by which SPO needed a proposed response to the office actions
15 and, unless that proposed response was received by the proposed date, SPO would send a
16 reminder to the clients until the response was received;

17 19. I added another assistant to SPO in about 1989 and another in about 1990,
18 both of whom engaged in the preparation of specifications and drawings for Japanese
19 patent applications, due primarily to the sharp increase in the number of Japanese patent
20 applications and Japanese clients who entrusted their work to SPO at that point in time;

21 20. In about April 1991, I hired another assistant for SPO to work on foreign
22 prosecution matters, such as (i) writing English language letters with English translations to
23 the various foreign attorneys with whom SPO was working at that time, (ii) writing Japanese

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 6 of 26

1 language letters to our Japanese clients about their foreign prosecution matters, (iii)
2 managing the due dates, etc., for the large increase in foreign patent application work that
3 SPO was experiencing at that time. Simply speaking, the workload for these foreign
4 applications had grown too large for me to manage alone. At that time, however, I also
5 worked on the revision of English language specifications, the preparation of English
6 language arguments and amendments to foreign office actions, etc.;

7 21. In about April 1992, I hired another assistant to help with the preparation of
8 specifications and drawings for Japanese patent applications due to increasing workload at
9 SPO with these Japanese applications;

10 22. In the timeframe of about April 1995, an SPO assistant at the time involved
11 with foreign prosecution matters, Ms. Yamada, developed a computerized database
12 management system for our foreign patent and trademark applications that was built upon
13 the Japanese database I had built for our Japanese applications. We have continued to
14 improve this foreign prosecution docketing system to this day;

15 23. Similar to our Japanese docketing system, the foreign docketing system
16 (including the U.S. as one of the "foreign" patent offices) included application filing date,
17 application number, applicant name(s), invention title, inventor name(s), mailing date of
18 office actions, response dates to office actions, due dates of argument, filing dates of
19 amendments, publication dates, publication numbers, register dates, register numbers, etc.
20 And, like the Japanese docketing system, we used these data in the foreign docketing
21 system to inform our Japanese clients about their foreign patent applications entrusted to
22 SPO;

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 7 of 26

1 24. However, our foreign docketing system at that time did not include data about
2 the actual filing date of a response to a foreign office action. Instead, we fully trusted the
3 foreign attorneys to file the response by the due date of a foreign office action, if we sent our
4 instructions to the attorneys in ample time before the due date. As a result, we only required
5 the foreign attorneys to send us an acknowledgement of their receipt of our instructions.
6 Accordingly, we put our emphasis at that time at SPO on providing the foreign attorneys with
7 our instructions before the response due date, rather than on confirming the actual filing
8 date of the response from the foreign attorneys. Of course, we would eventually learn of the
9 actual filing date of the response upon receiving the filed document by airmail from the
10 foreign attorneys;

11 25. In about December 2001, one of my assistants, Mr. Hayakawa, acquired the
12 qualifications of a Japanese patent attorney by passing the JPO examination, bringing the
13 total of SPO Japanese attorneys to two – myself and Mr. Hayakawa. However, Mr.
14 Hayakawa did not know at that time how to manage the patent business of SPO;

15 26. Accordingly, in the general timeframe of about 2000 to 2003, I had to
16 personally review all documents to be filed with foreign patent offices, as well as those to be
17 filed at the JPO, and in addition to personally sign or seal each of the documents. At the
18 same time, I made it a point to travel about twice a month to visit SPO Japanese clients to
19 interview inventors and, similarly, to interview Japanese clients and inventors who visited
20 SPO about once every two weeks. After many of these interviews, both away and at the
21 SPO office, I sometimes prepared drafts myself of the more important Japanese inventions,
22 and tried to leave to my assistants the work of initially drafting the Japanese patent
23 applications and amendments. The management of the due dates, etc., for this Japanese

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 8 of 26

1 application work, however, was administered during this general timeframe by my SPO
2 assistants in the manner as described previously in this Declaration;

3 27. With respect to foreign prosecution matters during this general timeframe and
4 as discussed previously in this Declaration, we fully trusted the foreign attorneys to file office
5 action responses by the due dates of the actions, if we sent our instructions in ample time
6 before the due dates;

7 28. In about April 2004, I hired another assistant to help with the clerical end of
8 our Japanese prosecution matters. In about April 2005, I added a further assistant to help
9 with the preparation of specifications and drawings for Japanese patent applications, and an
10 additional assistant to help with the clerical end of our foreign prosecution work. From 2004
11 to 2006, the work and practices at SPO proceeded as described previously in this
12 Declaration, as did my personal involvement in the management of that work and its related
13 practices;

14 29. In the timeframe of about 2007, we slightly modified the SPO docketing
15 system and practices with respect to foreign prosecution matters by adding data to the
16 foreign docketing system concerning the actual filing date of a response to a foreign office
17 action. While our trust and confidence with the foreign attorneys with whom we worked as
18 of that point in time had not changed, the main reason for this slight modification resulted
19 from some experiences with Mr. Goldberg. In particular, Mr. Goldberg had filed some
20 responses to U.S. PTO office actions with time extensions that were not previously
21 authorized by SPO or its clients. As a result, we began to ask all of our foreign attorneys,
22 including Mr. Goldberg, to inform SPO by facsimile or e-mail immediately upon the actual
23 filing of a response;

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 9 of 26

30. Our SPO internal procedures were modified even further in that, every Tuesday, my assistant in charge of foreign prosecution matters was required to deliver to all of our other assistants a spreadsheet of the pending patent applications in which PTO office actions were outstanding, along with the actual filing date of responses to the office actions. In this manner, any office action on the spreadsheet that did not have an actual filing date after it would remain on the spreadsheet. As a result, we would hopefully become aware if any foreign attorney had not yet responded to an outstanding office action;

31. In summary therefore, concerning the workload and staffing of SPO from about 1983 to 2008, the following numerical information is provided:

	APPLICATIONS FILED THROUGH MASAYOSHI SUDA / SPO								
	Japanese application by Japanese applicant			Foreign application by Japanese applicant			Japanese application by foreign applicant		
	Patent	Design	TM	Patent	Design	TM	Patent	Design	TM
1983	7 (0)	1	14	0 (0)	0	0	0	0	0
1984	59 (0)	4	38	4 (0)	0	0	0	0	0
1985	105 (0)	0	34	5 (0)	0	0	0	0	0
1986	118 (0)	0	31	5 (0)	0	0	0	0	0
1987	109 (0)	1	23	7 (0)	0	0	2	0	0
1988	127 (0)	1	23	1 (0)	0	1	3	0	0
1989	132 (0)	2	36	4 (0)	0	0	2	0	0
1990	235 (0)	1	28	8 (0)	0	0	1	0	0
1991	225 (0)	0	21	31 (0)	0	5	4	0	0
1992	188 (0)	3	39	121 (0)	0	2	1	0	0
1993	231 (0)	0	30	26 (0)	0	0	6	0	0
1994	204 (11)	4	40	36 (0)	0	0	1	2	0
1995	185 (14)	1	66	36 (1)	0	2	4	0	0
1996	228 (5)	0	77	13 (4)	0	3	1	0	0
1997	241 (25)	0	29	8 (0)	0	0	5	0	0

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 10 of 26

1998	247 (51)	0	11	17 (14)	0	0	1	0	0
1999	235 (56)	3	22	40 (15)	0	2	0	0	0
2000	248 (53)	2	16	62 (47)	0	3	6	0	0
2001	240 (25)	6	28	24 (16)	0	3	7	0	3
2002	188 (45)	5	15	10 (1)	0	0	1	0	3
2003	200 (46)	3	22	23 (22)	0	1	10	0	0
2004	173 (27)	4	22	36 (29)	0	3	26	7	2
2005	176 (37)	3	2	86 (30)	0	0	6	2	1
2006	149 (19)	9	12	74 (59)	0	2	23	4	0
2007	136 (5)	19	17	62 (36)	0	0	21	0	4
2008	191 (51)	5	41	23 (17)	0	0	12	0	0
Total	4,577 (470)	77	737	762 (296)	0	27	143	15	13

Numbers in parentheses in the first and fourth columns above are the numbers for SPO client SUMCO, as discussed later in this Declaration.

STAFF MEMBERS OF SPO OTHER THAN M/M MASAYOSHI SUDA					
	Staff for technology	Staff for Japan matters	Staff for foreign matters	Other staff (Accountant)	Staff Totals
1983	0	0	0	1	1
1984	0	0	0	1	1
1985	0	0	0	1	1
1986	0	0	0	1	1
1987	0	1	0	1	2
1988	0	1	0	1	2
1989	1	1	0	1	3
1990	2	1	0	1	4
1991	2	1	1	1	5
1992	3	1	1	1	6

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 11 of 26

1993	3	1	1	1	6
1994	3	1	1	1	6
1995	3	1	1	1	6
1996	3	1	1	1	6
1997	3	1	1	1	6
1998	3	1	1	1	6
1999	3	1	1	1	6
2000	3	1	1	1	6
2001	3	1	1	1	6
2002	3	1	1	1	6
2003	3	1	1	1	6
2004	3	2	1	1	7
2005	4	2	2	1	9
2006	4	2	2	1	9
2007	4	2	2	1	9
2008	4	2	2	1	9

III. JULES GOLDBERG, ESQ.

32. As discussed earlier in paragraph 13 of this Declaration, I originally met Mr. Goldberg in or about 1985 through an introduction made by Mr. Kawakami of KSO for SPO U.S. patent application work for MMC. This MMC work was the first time I was involved in the filing of U.S. patent applications. As time went on, I learned through my experiences with Mr. Goldberg about not only U.S. patent practice, but also how to write English language letters. (I had previously studied by myself, to some extent, on U.S. and EP prosecution matters);

33. Although I have never had a formal business relationship with Mr. Goldberg (to the contrary, we have always been completely independent of one another in all of our

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 12 of 26

1 business affairs), I have entrusted Mr. Goldberg over these many years to handle significant
2 IP work for some of my clients who have had matters before the U.S. PTO. During these
3 many years, we have learned a lot from each other, both personally and professionally. I
4 am very proud of the fact that my clients with business before the U.S. PTO, and in other IP
5 matters, during those years have followed Mr. Goldberg from his U.S. law firms of Toren
6 McGeady & Goldberg, P.C., to McAulay, Nissen, Goldberg & Kiel LLP, to Reed Smith LLP
7 ("Reed Smith"), and finally to Duane Morris LLP ("Duane Morris"), by continuing to entrust
8 him with legal services;

9 34. In particular, from about 1984 to February 2008, whenever my SPO clients
10 asked me to file a U.S. patent application, I almost always nominated Mr. Goldberg as the
11 U.S. patent attorney, except for about five applications involving conflict or joint
12 representation issues. In this time period, my SPO records show that Mr. Goldberg filed
13 about 183 such U.S. patent applications;

14 35. Among the many clients of mine for whom Mr. Goldberg performed legal
15 services over the years in these many U.S. patent applications was Mitsubishi Materials
16 Silicon Corporation ("MSIL") (now known as SUMCO Corporation ("SUMCO")), which was
17 part of MMC). Mr. Goldberg was entrusted through me by MSIL to handle many IP matters,
18 including the preparation, filing, and prosecution of the two specific U.S. patent applications
19 at issue here, i.e., Application Serial No. 09/904,425 ("the '425 application"), filed on July 12,
20 2001 for inventors Cindy Kohanek and Gary Babb, entitled "Linearity Measuring Apparatus
21 for Wafer Orientation Flat," and Application Serial No. 09/718,659 ("the '659 application"),
22 filed on November 22, 2000 for inventors Kazuhiro Harada, Hisashi Furuya, Jun Furukawa,

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 13 of 26

1 Ken Nakajima, Hiroyuki Shiraki, and Yukio Muroi, entitled "Silicon Water and Method for
2 Manufacturing the Same;"

3 36. Both the '425 application and the '659 application were filed by Mr. Goldberg
4 in the U.S. PTO while he was with Reed Smith;

5 IV. RELATIONSHIP BETWEEN MR. SUDA, SPO, AND SUMCO (THE
6 PRESENT OWNER OF THE SUBJECT PATENT APPLICATIONS)
7

8 37. As discussed previously, MMC (now SUMCO; referred to collectively most
9 often in the remainder of this Declaration as SUMCO) has been a significant SPO client
10 since about June 1984. SPO records show that during this time period, SPO filed about 470
11 Japanese patent applications for SUMCO that have matured into about 160 Japanese
12 patents. SPO records show further that about 296 foreign patent applications were filed for
13 SUMCO over this time period, of which about 133 resulted in issued foreign patents;

14 38. Based upon this history and the personal relationships I have developed with
15 SUMCO over these many years, I regard SUMCO as an extremely good and trusting client;

16 39. I firmly believe that this relationship has also resulted from the personal way I
17 have conducted business with SUMCO, and in particular the SUMCO IP Department.
18 Generally speaking, I have made a point of visiting SUMCO's Japanese Institutes and
19 factories two to five times a year since 1984 to interview and meet inventors and staff
20 members of the SUMCO IP Department. The inventor interviews are usually directed to
21 invention proposals and memoranda about the proposals for the potential filing of Japanese
22 patent applications. If these proposals are worthy of filing, I usually require detailed
23 examples and comparative example data from the inventors;

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 14 of 26

1 40. I then generally prepare a draft specification and drawings for the Japanese
2 applications, with assistance from my SPO assistants, which are then reviewed and
3 approved by the SUMCO inventors during each stage of the drafting process;

4 41. Whenever JPO office actions are received in my SUMCO patent applications,
5 SPO prepares and forwards to the SUMCO IP Department detailed comments about those
6 office actions, usually within about two weeks of their receipt, along with proposed claims /
7 amendments, if necessary. In this manner, SPO has tried to set a deadline for receipt of the
8 SUMCO IP Department reply to our comments and, in those instances where SUMCO does
9 not timely send that reply, we send a reminder to SUMCO until the comments are received;

10 42. With regard to foreign office actions (including those from the U.S. PTO),
11 SPO usually translates into English the SUMCO IP Department's Japanese comments to
12 SPO on those actions, and then prepares and sends English instructions to our foreign
13 patent attorneys in light of those comments -- usually two weeks before the actual due date
14 of a response to the office action;

15 43. Before 2006, SPO only required foreign attorneys to send an
16 acknowledgement of the receipt of SPO instructions. However, from about 2007, SPO
17 modified its practices in this regard as discussed in paragraph 29 of this Declaration;

18 44. With particular regard to SUMCO in the timeframe of about June 1994 to
19 about August 2003, SPO corresponded with the SUMCO IP Department mostly by facsimile
20 and mail, and partially by e-mail, in the following manner:

21 a. our drafted documents to be filed with the JPO or foreign patent
22 offices were sent to SUMCO by facsimile in accordance with the applicable
23 due dates;

24 b. the SUMCO-corrected draft documents were returned to us by
25

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 15 of 26

1 facsimile;
2

3 c. our revised draft documents were sent to SUMCO by facsimile within
4 a couple of days of receipt of the SUMCO corrections;
5

6 d. SUMCO's instructions for filing of the final documents with the JPO or
7 foreign patent offices were sent to us by facsimile or e-mail by the deadline
8 set by SPO;
9

10 e. the filed documents were sent to SUMCO by mail within a couple of
11 days after their actual filing; and
12

13 f. in accordance with our docketing systems, we tried to report to
14 SUMCO the status of any as-yet-unfiled patent applications or
15 amendments, as well as their actual filing dates and filing numbers, as the
16 case may be, by the first day of each month;
17

18 45. In the general time period of about September 2003 to about March 2007,
19 SPO corresponded with the SUMCO IP Department mostly by e-mail and regular mail, and
20 partially by facsimile, in the same manner as described in the preceding paragraph of this
21 Declaration, except that email was generally used other than facsimile (or both methods
22 were used), but for subparagraph (e) where mail was still generally used;

23 46. In the general time period of about March 2007 to December 2008, we
24 corresponded with the SUMCO IP Department mostly by Virtual Private Network (VPN) and
25 e-mail, and partially by regular mail, in the general manner as described previously;

26 47. Although personnel at both SPO and the SUMCO IP Department have
27 changed over the years, in the time period of about June 1994 to about June 2002, SPO
28 (mainly through Ms. Yamada and myself) was communicating with the SUMCO IP
29 Department mainly through Mr. Hayashi, Mr. Masuda, and Ms. Nagao. From about July
30 2002 to about August 2003, the SUMCO people were generally Mr. Masuda, Mr. Sudo (a
31 different person other than myself with a similar family name), Ms. Nagao, and Ms. Kon.

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 16 of 26

1 From about September 2003 to about February 2008, it was Ms. Yamada, Mr. Fusejima,
2 and me at SPO, with usually Mr. Sudo and Ms. Kon at the SUMCO IP Department. (In the
3 end of March 2006, I hired Mr. Fusejima.). And, finally from about March 2008 to about
4 December 2008, it was Mr. Fusejima, Ms. Imai, and me at SPO, and Mr. Hasegawa and Ms.
5 Kon from SUMCO;

6 48. Despite my many years of detailed experiences with the SUMCO IP
7 Department with and through the foregoing SUMCO personnel, neither SPO nor I has ever
8 come to learn, nor did we feel it important to learn, the docketing system or procedures used
9 by the SUMCO IP Department, at its end, relative to the work performed by SPO for
10 SUMCO;

11 49. With particular regard to both the '425 and '659 applications, most if not all
12 communications concerning those applications were conducted by and through Mr. Hayashi,
13 Mr. Masuda, and myself. While I discuss later in this Declaration how, when, and why SPO
14 and I first became actually aware of the abandonment of these two applications (and then
15 immediately informed the SUMCO IP Department of the abandonments), I will mention here
16 certain SPO-SUMCO communications regarding the '425 and '659 applications;

17 50. For example with respect to the '425 application, in the time period following
18 the Non-Final Office Action mailed from the U.S. PTO on July 3, 2002, there were at least
19 seven back-and-forth communications between SPO and the SUMCO IP Department;

20 51. For example with respect to the '659 application, in the time period following
21 the Final Office Action mailed from the U.S. PTO on December 31, 2002 through and after
22 the Proposed Amendment of June 20, 2003 was filed in the U.S. PTO in response to the

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 17 of 26

1 Advisory Action of May 20, 2003, there were at least eight back-and-forth communications
2 between SPO and the SUMCO IP Department;

3 52. I do not have any knowledge why the SUMCO IP Department did not contact
4 SPO at any time about the '425 or '659 applications after the last communications the
5 SUMCO IP Department received by SPO concerning the applications, as mentioned in
6 paragraphs 50 and 51 of this Declaration, until my notification to SUMCO, *infra*, of the
7 abandonments. I can state only the fact that no such contact in this regard was made
8 during this extended time period;

9 53. I can state unequivocally and without any reservation whatsoever that, during
10 the entire time both of the '425 and the '659 applications were pending before the U.S. PTO,
11 from our perspective, including the time period from the last communications the SUMCO IP
12 Department received by SPO concerning the applications, as mentioned in paragraphs 50
13 and 51 of this Declaration, until my notification to SUMCO, *infra*, of the abandonments,
14 neither I nor SPO intended either application to go abandoned;

15 54. I can state as well, unequivocally and without any reservation whatsoever
16 that, during the entire time both of the '425 and the '659 applications were pending before
17 the U.S. PTO, from our perspective, including the time period from the last communications
18 the SUMCO IP Department received by SPO concerning the applications, as mentioned in
19 paragraphs 50 and 51 of this Declaration, until my notification to SUMCO, *infra*, of the
20 abandonments, neither I nor SPO was informed or had any reason to believe that either
21 SUMCO or the SUMCO IP Department intended either application to go abandoned;

22 V. **DISCOVERY OF THE ABANDONMENTS**

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 18 of 26

1 55. On or about December 7, 2007, Mr. Goldberg sent an e-mail informing me
2 that he would be leaving Reed Smith to join Duane Morris at the end of 2007 and that, as a
3 result, he was going to send me an appropriate draft letter to send to Reed Smith to instruct
4 the firm to transfer its SPO files to Duane Smith. Eventually, a final version of this letter was
5 sent by me to Reed Smith;

6 56. On or about January 2, 2008 and as a consequence of my sending the letter
7 to Reed Smith discussed in the preceding paragraph, Mr. Goldberg and I were copied on a
8 letter from Ms. Natasha M. Robinson, a paralegal at Reed Smith, to a Mr. Stu Steptoff, an
9 individual at Duane Morris, that included what I understood to be the then pending U.S.
10 patent application files at Reed Smith being transferred from Reed Smith to Duane Morris, in
11 17 boxes with 17 individual lists of the actual files in each of the 17 boxes. According to
12 these lists, the '425 application file was in Box 3 and the '659 application file in Box 14;

13 57. Mr. Fusejima and I carefully compared the patent applications on the 17
14 individual lists to a list of applications we had prepared from the SPO foreign docketing
15 system that reflected what our records showed were the pending U.S. applications entrusted
16 at that time to Mr. Goldberg at Reed Smith. This comparison at our end revealed that
17 almost all pending U.S. applications on our list were on the 17 individual lists (including the
18 '425 and '659 applications), except that three pending applications and two patented
19 applications from our list were missing from the 17 individual lists;

20 58. So, we asked Ms. Robinson to find these five missing application files and to
21 send them to Duane Morris, which she apparently did, and acknowledged in a confirmation
22 letter to Mr. Steptoff dated January 7, 2008, that was likewise copied to Mr. Goldberg and

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 19 of 26

1 me. The single box apparently sent with the January 7th letter contained application files
2 listed on three individual lists included with the letter;

3 59. Again, Mr. Fusejima and I carefully checked these latest lists from Reed
4 Smith against our list. However, in doing so, we found on the three individual lists not only
5 the five originally missing application files, but also four others. A subsequent check with
6 our foreign docketing system revealed that yet another application on our system was still
7 missing on the Reed Smith lists from Ms. Robinson. We then followed up again with Ms.
8 Robinson about this latest missing application file, which she apparently rectified in another
9 letter copied to Mr. Goldberg and me on January 29, 2008;

10 60. On or about January 23, 2008, Mr. Fusejima found by accident an old SPO
11 file on an SPO shelf, that he had not previously handled since joining SPO. The old SPO
12 file was the SPO file of the '659 application. He noticed that the last correspondence in the
13 file from Mr. Goldberg, dated June 27, 2003, stated that "[w]e can expect to receive a Notice
14 of Allowance in due course and shall report same to you promptly." Mr. Fusejima noticed
15 also that there had been no correspondence from Mr. Goldberg since the June 27th
16 correspondence, which he immediately reported to me. I instructed Mr. Fusejima to
17 immediately e-mail Mr. Goldberg on my behalf about the status of the '659 application. He
18 did so on January 24, 2008, and immediately reported that to me and brought me a copy of
19 the email;

20 61. In the January 24th e-mail to Mr. Goldberg, Mr. Fusejima stated the following:

21 "Your [last] letter to us said "[w]e can expect to receive a Notice of Allowance
22 in due course and shall report same to you promptly"? You moved to Duane
23 Morris, so we must report to SUMCO about all the status [sic: status of all of
24 the applications] you have been in charge of. Please find out and tell us the
25 situation promptly;"

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 20 of 26

1
2 62. I believed Mr. Goldberg and decided to await his reply, but that reply never
3 came to us. In hindsight, all I can say in this regard is that I felt extremely uncomfortable
4 bothering Mr. Goldberg about a response to the January 24th email, especially since it
5 appeared to indicate only that the Notice of Allowance had not been sent to SPO and that,
6 perhaps, Mr. Goldberg had simply forgotten to send it. Apparently, however, the matter from
7 SPO's perspective just slipped between the cracks at our end until about November 2008,
8 when I was contacted by Mr. Goldberg concerning his intent to leave Duane Morris for
9 another law firm;

10 63. On or about November 24, 2008, I learned during a telephone call from Mr.
11 Goldberg of his planned departure at the end of 2008 from Duane Morris to the Law Firm of
12 Buckley, Maschoff & Talwalkar LLC ("BMT"). On the following day, Mr. Goldberg confirmed
13 his telephone conversation and asked me, as he had done before in similar circumstances,
14 to write a letter requesting Duane Morris to transfer the SPO matters at Duane Morris to Mr.
15 Goldberg at BMT;

16 64. On or about November 27, 2008, I sent a reply email to Mr. Goldberg stating,
17 in relevant part, that while I was awaiting authorization from my clients to transfer the SPO
18 files, such as authorization from SPO client SUMCO, Mr. Goldberg should "send [me]
19 immediately by email or facsimile the numbers and the present status of all of [SPO's] US
20 patents and pending US patent applications recorded by [the] Duane Morris docketing
21 system." Mr. Goldberg replied to this email on the same day, stating in part that "[a]s this is
22 the Thanksgiving weekend holiday, our office is closed Thursday and Friday so I have no

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 21 of 26

1 docketing staff presently available to prepare the status report. But this will be the first thing
2 that we work on beginning next Monday;”

3 65. On the same day, I made an appointment for December 1, 2008 to meet with
4 the SUMCO IP Department to discuss Mr. Goldberg’s latest situation. At this meeting,
5 SUMCO decided to consider a U.S. law firm other than Duane Morris for the SUMCO work
6 previously entrusted to Mr. Goldberg;

7 66. On or about December 2, 2008, Mr. Goldberg replied by email to my request
8 of November 27th by providing a spreadsheet showing the then presently pending SPO
9 patent applications and their status, as well as those applications which had issued as U.S.
10 patents from October 1, 2008. The total number of cases on the spreadsheet was 52;

11 67. Upon receiving Mr. Goldberg’s December 2nd email and attached
12 spreadsheet, I asked Mr. Fusejima and Ms. Imai to carefully compare the latest Goldberg
13 spreadsheet with SPO’s own spreadsheet based on SPO’s foreign database information.
14 As a result, they found three cases missing from the SPO spreadsheet and one case not
15 identifiable. Mr. Fusejima then reported these findings to me. As a result of these missing
16 cases and in light of the unanswered e-mail to Mr. Goldberg sent on January 24, 2008 (as
17 discussed in paragraph 61), I accessed the U.S. PTO’s PUBLIC PAIR database. In doing
18 so, I found that one of the three missing cases, assigned to SUMCO, was indicated as being
19 abandoned for failure to respond to a PTO Office Action, but I did not find any information
20 about the other two cases. The case I found on PUBLIC PAIR was the ‘425 application.
21 This was the first time that either SPO or I learned of, or had reason to learn of, the apparent
22 abandonment of the ‘425 application;

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 22 of 26

1 68. We were very upset about this information since nothing in the history or
2 records of SPO ever indicated an abandonment of a patent application handled by Mr.
3 Goldberg without any corresponding correspondence to SPO about the matter, even
4 including the events that led to Mr. Fusejima's unanswered e-mail to Mr. Goldberg of
5 January 24, 2008;

6 69. Mr. Fusejima informed me further at that time that, as a result of the foregoing
7 events, he found regulations on the U.S. PTO website about the revival of unintentionally
8 abandoned patent applications and wondered if the regulations might be applicable. He
9 brought me a copy of the website regulations, about which I never had knowledge prior to
10 this or any other event, or an occasion to seek such knowledge;

11 70. Later on December 2, 2008, I sent an email to Mr. Goldberg stating the
12 following:

13 "We have reviewed your spreadsheet showing the presently pending
14 applications and their status and found three missing cases therein as
15 follows. The last correspondences between you and us are attached
16 hereto.

17
18 1) Your Ref.: 500577.20011 Our Ref.: ML6103US US SN
19 09/718,659

20 2) Your Ref.: 500577.20035 Our Ref.: ML6227US US SN
21 09/904,425

22 3) Your Ref.: 500577.20089 Our Ref.: ML6436US US SN
23 11/466,964.

24
25 Also, we cannot find a US patent application US SN 12/259,940, Your Ref.
26 JG-SU-5244CON shown in the last line of the spreadsheet. We have not
27 yet received its relevant documents, namely filing report, filing number, etc.

28
29 Please let me know the missing reasons and present status of the above-
30 mentioned three cases as well as the information about US patent
31 application US SN 12/259,940 immediately. We look forward to receiving
32 your reply by e-mail."
33

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 23 of 26

1 71. On or about December 4, 2008, I sent an email to Mr. Goldberg stating, in
2 part, that I was awaiting his reply to my December 2nd email "... ever since the day before
3 yesterday." I then emailed him a reminder, asking if he had "received [my] email of
4 December 2, 2008 [and if he could p]lease acknowledge receipt of this email;"

5 72. On or about December 8, 2008, I telephoned Mr. Goldberg about my
6 December 2nd and 4th emails. During that telephone conversation Mr. Goldberg informed
7 me that, as a consequence of looking into this matter, he learned for the first time that both
8 the '425 and '659 applications were abandoned. He told me further that he intended to file
9 petitions to revive these abandoned applications. However, he did not mention any reasons
10 for the abandonments;

11 73. Thus, this was the first time that either SPO or I learned of (a) the
12 abandonment of the '659 application, and (b) information from Mr. Goldberg of the
13 abandonment of the '425 application, and thus confirming what I saw on PUBLIC PAIR on
14 December 2, 2008. Later that same day, Mr. Goldberg emailed me stating that "[he] will
15 forward a full report to [me] tomorrow concerning these cases. [He is] awaiting receipt of a
16 file from [the Duane Morris] storage facility;"

17 VI. THE REVIVAL PROCESS

18 74. On or about December 9, 2008, I sent the following email to the Darby Firm:

19- "We have some situation and would like to ask your assistance. There
20 are three US patent applications handled by other US agents. We
21 recently found out that these applications are not on their "pending"
22 application list.
23

24- We sent a list (see first PDF attached) to the US agent and asked them
25 about the status of these three applications on the phone. According to
26 them, two of them have been abandoned and they will try to retrieve.

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 24 of 26

1 Since we haven't received any formal explanation from them, we have no
2 idea why those two applications are abandoned.

3
4- According to PAIR, there is no status shown for 1); For 2), the status is
5 "Abandoned-Failure to Respond to an Office Action". For 3), pending.
6

7- So our question is that if the application is abandoned is it difficult to
8 retrieve? If we file a petition to retrieve the application, is [sic: are] there
9 any special circumstances that the petition is granted for sure? Is it better
10 for a new US agent to file a petition to retrieve the application than the US
11 agent who currently has power? We would appreciate it if you could let
12 us know the possibility of retrieving these cases.
- 13

14 1) 米国出願No.09/718,659

15 2) 米国出願No.09/904,425

16 3) 米国出願No.11/466,964;"

17
18 75. Having previously made an appointment to visit the SUMCO IP Department
19 on December 12, 2008, I visited SUMCO headquarters that day and reported with the
20 greatest and most sincerest of apologies to Mr. Takeuchi (General Manager of the SUMCO
21 IP Department), Mr. Miura (Manager of the IP Department), and Mr. Hasegawa (Assistant
22 Manager of the Department), of the abandonments of the '425 and '659 applications.
23 SUMCO was very upset with this information, which just confirmed my clear understanding
24 at the time that the SUMCO IP Department, like SPO and myself, had no previous
25 knowledge whatsoever of the abandonments. Of course, I knew for sure that the SUMCO
26 IP Department was not previously informed by me of the abandonments since neither SPO
27 nor I knew of the abandonments to so inform SUMCO. Further, the SUMCO IP Department
28 made clear to me at that moment that I should make my strongest efforts to have Darby
29 revive the applications, which were not abandoned intentionally or knowingly by the SUMCO
30 IP Department, or by any of these three members of the IP Department;

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 25 of 26

1 76. On or about December 12, 2008, I sent the following facsimile to Mr.
2 Goldberg:

3 "I decided to delegate the above-identified two cases ... to a new
4 agent in order to revive them. The new agent name and other
5 information are as follows: The new agent name: DARBY & DARBY
6 I inform you that the new agent contacts you in connection with
7 the two cases;"
8

9 77. From the time I sent the December 12, 2008 email to Mr. Goldberg about the
10 delegation of the revival effort to the Darby firm, until the filing of what I hope are grantable
11 petitions, pursuant to PTO Rule 1.137(b), for both the '425 and '659 applications that
12 accompany this Declaration, I have had many email and telephone communications with the
13 Darby firm about this matter, as well as with my client SUMCO. In fact, due to the
14 exigencies of this matter, among other things, I traveled to the States and personally visited
15 with the Darby firm in New York City, on December 29, 2008, for an extensive and detailed
16 discussion of the revival effort and the factual circumstances which led to that effort,
17 including many of the facts and circumstances set forth in this Declaration;

18 78. As a result of the foregoing, I can state without equivocation or reservation
19 that, during the entire delay in filing the required reply from the due dates of the PTO Office
20 Actions at issue in the '425 and the '659 applications, until the filing of what I hope are
21 grantable petitions, pursuant to PTO Rule 1.137(b), for both the '425 and '659 applications
22 that accompany this Declaration, the abandonment of both applications was unintentional;

23 **VII. CONCLUSION**

24 79. In signing this Declaration, I understand that the Declaration will be filed as
25 evidence in support of a Petition to Revive for the '425 and '659 applications; and

EXHIBIT 1

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 26 of 26

80. I declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true. I further declare that these statements were made with the knowledge and understanding that willful false statements and the like so made are punishable by fine, or imprisonment or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of any U.S. patents issued from such applications.

Respectfully submitted,

Dated: January 29, 2009

Masayoshi Suda
MASAYOSHI SUDA

EXHIBIT 2

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 1 of 12

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE OFFICE OF PETITIONS**

In re Patent Application of:
Cindy KOHANEK et al.

Customer No.: 07278

Application No.: 09/904,425

Confirmation No.: 1776

Filed: July 12, 2001

Art Unit: 2859

For: LINEARITY MEASURING APPARATUS
FOR WAFER ORIENTATION FLAT

Examiner: G. Bradley Bennett

Attorney Docket No.: 21223/0211061-US0

Abandoned: January 4, 2003

In re Patent Application of:
Kazuhiro HARADA et al.

Customer No.: 07278

Application No.: 09/718,659

Confirmation No.: 2444

Filed: November 22, 2000

Art Unit: 1775

For: SILICON WAFER AND METHOD FOR
MANUFACTURING THE SAME

Examiner: Stephen J. Stein

Attorney Docket No.: 21233/0211060-US0

Abandoned: July 1, 2003

DECLARATION OF JULES E. GOLDBERG, ESQ.

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

I, **JULES E. GOLDBERG**, hereby declare and state as follows:

I. BACKGROUND

1. I am a citizen of the United States and am more than twenty-one (21) years
of age;

EXHIBIT 2

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 2 of 12

1 2. I am presently of counsel at the Law Firm of Buckley, Maschoff & Talwalkar
2 LLC ("BMT") (<http://www.bmtpatent.com/>), where I have been employed since January 1,
3 2009;

4 3. Before joining BMT in 2009, I was a partner at the Law Firm of Duane Morris
5 LLP ("Duane Morris") in its New York office from January 1, 2008 until October 31, 2008,
6 and was a contract lawyer until December 31, 2008;

7 4. Before joining Duane Morris in 2008, I was a partner at the Law Firm of Reed
8 Smith LLP ("Reed Smith") in its New York office from July 1, 2000 to December 31, 2006,
9 and Counsel from January 1, 2006, to December 31, 2007;

10 5. I was a partner at the Law Firm of McAulay, Nissen, Goldberg & Kiel LLP
11 from about February 1987 to June 30, 2000, when the firm combined with Reed Smith;

12 6. Before joining McAulay, Nissen, Goldberg & Kiel LLP in 1987, I was a
13 member of the firm of Toren McGeady & Goldberg, P.C. from about 1974 to about 1987;

14 7. Before joining Toren McGeady & Goldberg, P.C., I was in-house Patent and
15 Trademark Counsel to United Merchants & Manufacturers, Inc. from about 1971 to about
16 1974;

17 8. Before joining United Merchants & Manufacturers, Inc., I was a patent agent
18 with Hubbell, Cohen & Steifel from about 1968 to about 1971;

19 9. Before joining Hubbell, Cohen & Steifel in about 1968, I was a patent agent
20 with Hydrocarbon Research, Inc., from about 1966;

21 10. Before being a patent agent with Hydrocarbon Research, Inc., I was a
22 research chemist with E.I. Dupont de Nemours & Company from about 1963 to about 1966;

EXHIBIT 2

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 3 of 12

1 11. I earned a J.D. from the Seton Hall University School of Law in 1970, a
2 Masters of Science in Organic Chemistry from the University of South Carolina in 1963, and
3 a Bachelors of Science in Chemistry from Rutgers University in 1960. I have been a
4 member of the New York State Bar since about 1971 and a Registered Attorney with the
5 U.S. Patent and Trademark Office ("PTO") since 1967 as a patent agent, and since 1971 as
6 a patent attorney (Registration No. 24,408);

7 12. I have been a member of the Association of the Bar of the City of New York
8 (Member, Committee on Patents, 1981-1984); New York State and American Bar
9 Associations; New York Intellectual Property Law Association; and the American Intellectual
10 Property Law Association;

11 13. My practice includes Intellectual Property ("IP") law, with a focus on patent
12 prosecution, due diligence, and freedom to use opinions in the chemical, biotechnology, and
13 pharmaceutical arts. I have considerable experience in patent infringement litigation,
14 including defense of ANDA actions. I have also handled trademark infringement litigation
15 and oppositions and appeals before the Court of Appeals for the Federal Circuit. I also sat
16 as an Arbitrator at the Civil Court of the City of New York, Small Claims Part;

17 II. THE SUDA PATENT OFFICE

18 14. In or about 1984, I began a long and continuous professional and business
19 relationship with Mr. Masayoshi Suda ("Mr. Suda"), the founder of the Japanese Patent Law
20 Firm called the SUDA PATENT OFFICE ("SPO"), whose present address is Oak Ikebukuro
21 Bldg 7F.21-11, Higashi-Ikebukuro 1-chome, Toshima-ku, Tokyo 170-0013 Japan Tel: 81-3-
22 3988-4326, Fax: 81-3-3986-4443;

EXHIBIT 2

In Support of Revival Petition
Under 37 CFR 1.137(b)

Page 4 of 12

1 15. I originally met Mr. Suda in or about 1985 through an introduction made by
2 Mr. Kawakami, the founder of the KAWAKAMI PATENT OFFICE in Tokyo. Although I have
3 never had a formal business relationship with Mr. Suda or SPO (to the contrary, we have
4 always been completely independent of each other in all of our business affairs), I have
5 been honored over these many years by Mr. Suda to have been entrusted by him to handle
6 IP work for some of his clients who had matters before the PTO, among other things.
7 During these many years, we have learned a lot from each other, both personally and
8 professionally, and I am very proud of the fact that both he and, by reference, most of his
9 SPO clients with business before the PTO, and in other IP matters, followed me from Toren
10 McGeady & Goldberg, P.C., to McAulay, Nissen, Goldberg & Kiel LLP, to Reed Smith, and
11 to Duane Morris, by continuing to entrust me with IP legal services;

12 16. Among the many clients of Mr. Suda and SPO for whom I performed IP legal
13 services over the years was Mitsubishi Materials Silicon Corporation ("MSIL," now SUMCO
14 Corporation ("SUMCO")). I was entrusted by MSIL to handle many IP matters, including the
15 preparation, filing, and prosecution of the two specific U.S. patent applications at issue, i.e.,
16 Application Serial No. 09/904,425 ("the '425 application"), filed on July 12, 2001 for inventors
17 Cindy Kohanek and Gary Babb, entitled "Linearity Measuring Apparatus for Wafer
18 Orientation Flat," and Application Serial No. 09/718,659 ("the '659 application"), filed on
19 November 22, 2000 for inventors Kazuhiro Harada, Hisashi Furuya, Jur Furukawa, Ken
20 Nakamira, Niroyuki Shiraki, and Yukio Muroi, entitled "Silicon Water and Method for
21 Manufacturing the Same;"

EXHIBIT 2

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 5 of 12

1 17. Both the '425 application and the '659 application were filed by me in the
2 PTO while I was with Reed Smith. The Reed Smith internal file references for these two
3 applications were JG-SU-5072/500572.20035 and JG-SU-5020/500577.20019, respectfully;

4 **III. REED SMITH**

5 18. Based upon information and belief, among the database systems and
6 business records used by Reed Smith while I was with the Firm to organize and manage its
7 legal work on behalf of its many clients, especially on the patent side of the firm's practice,
8 was a system known as "PATTSY." A general discussion of a generic "PATTSY" system
9 apparently offered by O P Solutions can be found at <http://www.opsolutions.com/>;

10 19. Even though I was with Reed Smith for just one year, I became reasonably
11 knowledgeable with the Reed Smith "PATTSY" system since I used and relied upon it on
12 almost a daily basis in the ordinary course of my business with Reed Smith concerning my
13 IP practice, amongst other ways my secretary and I kept abreast of my docket;

14 20. I did not personally enter data into the Reed Smith "PATTSY" system for my
15 work, but I relied in part on the system data to help guide the management and timeliness of
16 my docket, including such information as PTO Office Action mailing dates; PTO response
17 due dates; extendable due dates for those responses; response filing dates; receipt dates of
18 other PTO mailings; Reed Smith attorney names assigned to an application (for me, the
19 system used my initials "JG"); so-called "PATTSY" notes that could be entered manually into
20 "PATTSY," where there was no two-letter code; so-called "call-up" dates when, for example,
21 a 'PATTSY' entry should start appearing on an attorney's docket five days before the
22 deadline at issue; etc.;

EXHIBIT 2

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 6 of 12

1 21. In addition to the Reed Smith "PATTSY" database system, "paper files" for
2 the '425 and '659 applications were opened and maintained at Reed Smith, as was the
3 basic practice at Reed Smith for all such patent "paper files." The physical makeup of the
4 Reed Smith patent "paper files" was of the type that is relatively standard in most law firms
5 which handle patent prosecution, among other things, in that the physical file was basically a
6 three-fold file, i.e., a left-hand section, a middle section, and a right-hand section, which
7 contained papers relating to the underlying patent application, including papers to/from the
8 PTO and to/from the client;

9 22. As with the Reed Smith "PATTSY" system, I became quite familiar with the
10 Reed Smith "paper files" since, among other things, these were the same types of files I
11 used before joining Reed Smith, and have used since departing Reed Smith because, as I
12 said previously, the physical makeup of the Reed Smith patent "paper files" was and
13 remains relatively standard in most law firms that handle patent prosecution. Further, I used
14 and relied upon the Reed Smith "paper files" on an almost daily basis in the ordinary course
15 of my business with Reed Smith concerning my IP practice. Indeed, there was almost never
16 a day when a patent "paper file" was not in my office awaiting action by me, or otherwise;

17 23. As stated earlier in this Declaration, I left Reed Smith at the end of 2007 to
18 join Duane Morris effective January 1, 2008. I can state unequivocally and without any
19 reservation whatsoever that, during the entire time I was employed by Reed Smith, it was
20 my understanding that both of the '425 and the '659 applications remained pending before
21 the U.S. PTO, and that I never intended either application to go abandoned;

22 24. Shortly before my departure from Reed Smith, I sent an email to Mr. Suda on
23 or about December 7, 2007 informing him of my intended departure and that I was going to

EXHIBIT 2

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 7 of 12

1 send him an appropriate draft letter to send to Reed Smith to instruct the firm to transfer its
2 SPO files to Duane Smith. Eventually, a final version of this letter was sent by Mr. Suda to
3 Reed Smith;

4 25. On or about January 2, 2008 and as a consequence of Mr. Suda sending the
5 letter to Reed Smith discussed in the preceding paragraph, Mr. Suda and I were copied on a
6 letter from Ms. Natasha M. Robinson, a paralegal at Reed Smith, to a Mr. Stu Steptoff, an
7 individual at Duane Morris, that included the then pending U.S. patent application files at
8 Reed Smith being transferred from Reed Smith to Duane Morris, in 17 boxes with 17
9 individual lists of the actual files in each of the 17 boxes. According to these lists, the '425
10 application file was in Box 3 and the '659 application file in Box 14;

11 26. After a review of the patent applications on the 17 individual lists to a list of
12 applications prepared by SPO revealed that three pending applications and two patented
13 applications appeared to be missing from the 17 individual lists, Ms. Robinson was asked to
14 find the five missing application files and to send them to Duane Morris, which she
15 apparently did, and acknowledged in a confirmation letter to Mr. Steptoff dated January 7,
16 2008, that was likewise copied to Mr. Suda and me. The single box apparently sent with the
17 January 7th letter contained application files listed on the three individual lists included with
18 the letter;

19 27. After another review of the patent applications on the three individual lists, yet
20 another application appeared to be missing, which Ms. Robinson apparently rectified in
21 another letter copied to Mr. Suda and me on January 29, 2008;

22 28. To the best of my information and belief, nothing was done to the Reed Smith
23 patent "paper files" for any of the applications sent from Reed Smith to Duane Morris upon

EXHIBIT 2

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 8 of 12

1 their arrival at Duane Morris, other than to have them sent to an off-site storage facility
2 maintained by Duane Morris;

3 29. Shortly after the events surrounding the various lists described in the
4 preceding four paragraphs of this Declaration, I have learned only now, as a consequence
5 of the present efforts to revive the '425 and '659 applications, that an email was sent to me
6 on January 24, 2008 from SPO's Mr. T. Fusejima, which is purported to state the following:

7 "Your [last] letter to us [in the SPO file of the '659 application] said "[w]e can
8 expect to receive a Notice of Allowance in due course [in that application]
9 and shall report same to you promptly"? You moved to Duane Morris, so we
10 must report to SUMCO about all the status [sic: status of all of the
11 applications] you have been in charge of. Please find out and tell us the
12 situation promptly;"
13

14 30. I do not recall ever receiving or reading the email identified in the preceding
15 paragraph, but it may be that it was received at Duane Morris during my first month at the
16 firm while I was caught up at the time integrating myself into and starting my relationship
17 with Duane Morris. Whatever may be the actual situation, I simply do not recall ever
18 receiving, seeing, or knowing about the January 24, 2008 email;

19 31. During my entire time at Duane Morris, I did not have retrieved from Duane
20 Morris' storage facility either of the "paper files" of the '425 or '695 applications, nor did I
21 ever possess or review those files during that entire tenure, except in the limited manner
22 discussed later in this Declaration;

23 IV. DISCOVERY OF THE ABANDONMENTS

24 32. On or about November 24, 2008, I informed Mr. Suda by telephone of my
25 planned departure at the end of 2008 from Duane Morris to BMT. On the following day, I
26 confirmed my telephone conversation and asked Mr. Suda, as I had done a year before

EXHIBIT 2

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 9 of 12

1 when I was about to depart Reed Smith, to write a letter requesting Duane Morris to transfer
2 the SPO matters at Duane Morris to me at BMT;

3 33. On or about November 27, 2008, Mr. Suda responded to me by email stating,
4 in relevant part, that while he was awaiting authorization from his clients to transfer the SPO
5 files, such as authorization from SPO client SUMCO, I should "send [him] immediately by
6 email or facsimile the numbers and the present status of all of [SPO's] US patents and
7 pending US patent applications recorded by [the] Duane Morris docketing system." I replied
8 to this email on the same day, stating in part that "[a]s this is the Thanksgiving weekend
9 holiday, our office is closed Thursday and Friday so I have no docketing staff presently
10 available to prepare the status report. But this will be the first thing that we work on
11 beginning next Monday;"

12 34. On or about December 2, 2008, I replied by email to Mr. Suda's request of
13 November 27th by providing a spreadsheet showing the then presently pending SPO patent
14 applications and their status, as well as those applications which had issued as U.S.
15 patents from October 1, 2008. The total number of cases on the spreadsheet was 52;

16 35. Later on December 2, 2008, I received an email from Mr. Suda stating the
17 following:

18 "We have reviewed your spreadsheet showing the presently pending
19 applications and their status and found three missing cases therein as
20 follows. The last correspondences between you and us are attached
21 hereto.

- 22
23 1) Your Ref.: 500577.20011 Our Ref.: ML6103US US SN 09/718,659
24 2) Your Ref.: 500577.20035 Our Ref.: ML6227US US SN 09/904,425
25 3) Your Ref.: 500577.20089 Our Ref.: ML6436US US SN 11/466,964.
26

EXHIBIT 2

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 10 of 12

1 Also, we cannot find a US patent application US SN 12/259,940, Your Ref.
2 JG-SU-5244CON shown in the last line of the spreadsheet. We have not
3 yet received its relevant documents, namely filing report, filing number, etc.
4

5 Please let me know the missing reasons and present status of the above-
6 mentioned three cases as well as the information about US patent
7 application US SN 12/259,940 immediately. We look forward to receiving
8 your reply by e-mail."
9

10 36. On or about December 4, 2008, I received an email from Mr. Suda stating, in
11 part, that he was awaiting my reply to his December 2nd email "... ever since the day before
12 yesterday." Mr. Suda then emailed me a reminder, asking if I had "received [his] email of
13 December 2, 2008 [and if I could please acknowledge receipt of this email;"]

14 37. On or about December 8, 2008, Mr. Suda called me about his December 2nd
15 and 4th emails. During that conversation I informed Mr. Suda that, as a consequence of
16 looking into this matter, I learned for the first time that both the '425 and '695 applications
17 were abandoned. I told Mr. Suda further that I intended to file petitions to revive these
18 abandoned applications. I did not mention to Mr. Suda any reasons for the abandonments;

19 38. Later that same day, I emailed Mr. Suda stating that "I will forward a full
20 report to you tomorrow concerning these cases. I am awaiting receipt of a file from our
21 storage facility;"

22 39. Shortly thereafter, I received the Reed Smith patent "paper files" of the '425
23 and '659 applications from Duane Morris' storage facility, which confirmed the abandonment
24 of the applications;

25 40. After being informed by facsimile from Mr. Suda on or about December 12,
26 2008 that responsibility for the applications was just delegated to the New York Law Firm of
27 Darby & Darby ("Darby"), I immediately had the "paper files" that I had retrieved from Duane

EXHIBIT 2

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 11 of 12

1 Morris' storage facility hand-delivered to Darby later that day. Attached to this Declaration
2 as Exhibits 7 and 8 are PDF versions of the complete Reed Smith "paper files" of the '425
3 and '659 applications, respectively, delivered that day to Darby;

4 41. I have communicated several times with Darby about the applications after
5 their delivery to the firm, including an email I sent on January 7, 2009 identifying the names
6 and telephone numbers of personnel at Reed Smith whom I believed might have relevant
7 information concerning the applications;

8 42. As a result of the foregoing, I agreed to present a Declaration to the PTO in
9 support of a Petition to Revive the '425 and '659 applications. The original draft of the
10 Declaration was prepared by Darby, but I have thoroughly and completely reviewed the
11 original draft Declaration and have modified that original draft to be sure it states accurately,
12 and in my own words or words with which I have complete comfort as if they were my own,
13 what I would have written myself. Therefore, this Declaration is the result of the
14 modifications I made to the original draft provided by Darby that I have personally approved,
15 signed, and present here as my own Declaration;

16 V. CONCLUSION

17 43. As stated that, in signing this Declaration, I understand that the Declaration
18 will be filed as evidence in support of a Petition to Revive the '425 and '659 applications;
19 and

20 44. I declare that all statements made herein of my own knowledge are true, and
21 that all statements made on information and belief are believed to be true. I further declare
22 that these statements were made with the knowledge and understanding that willful false
23 statements and the like so made are punishable by fine, or imprisonment or both, under

EXHIBIT 2

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 12 of 12

Section 1001 of Title 18 of the United States Code, and that such willful false statements
may jeopardize the validity of any U.S. patents issued from such applications.

Respectfully submitted,

Dated:

1/28/09

JULES E. GOLDBERG



EXHIBIT 3

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 1 of 9

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE OFFICE OF PETITIONS

In re Patent Application of:
Cindy KOHANEK et al.

Customer No.: 07278

Application No.: 09/904,425

Confirmation No.: 1776

Filed: July 12, 2001

Art Unit: 2859

For: LINEARITY MEASURING APPARATUS
FOR WAFER ORIENTATION FLAT

Examiner: G. Bradley Bennett

Attorney Docket No.: 21223/0211061-US0

Abandoned: January 4, 2003

In re Patent Application of:
Kazuhiro HARADA et al.

Customer No.: 07278

Application No.: 09/718,659

Confirmation No.: 2444

Filed: November 22, 2000

Art Unit: 1775

For: SILICON WAFER AND METHOD FOR
MANUFACTURING THE SAME

Examiner: Stephen J. Stein

Attorney Docket No.: 21233/0211060-US0

Abandoned: July 1, 2003

DECLARATION OF RUTH MONTALVO

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

I, RUTH MONTALVO, hereby declare and state as follows:

I. BACKGROUND

1. I am a citizen of the United States and I am more than twenty-one (21) years
of age;

EXHIBIT 3

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 2 of 9

1 2. I am presently employed by the Firm of Reed Smith LLP ("Reed Smith")
2 (www.reedsmith.com). I have been employed by Reed Smith since July 3, 2000 as an IP
3 Specialist, where my main responsibilities include overseeing patent docketing, processing
4 incoming mail received from the U.S. PTO and outgoing mail for delivery to the U.S. PTO,
5 and assisting lawyers with the preparation and filing of all types of documents with the U.S.
6 PTO;

7 3. Pursuant to a request received from the New York Law Firm of Darby &
8 Darby ("Darby"), I searched some business records of Reed Smith to find certain information
9 that might concern two particular patent applications which, at one time, were believed to be
10 entrusted to Reed Smith, through a former Reed Smith partner, Jules Goldberg, Esq. In
11 particular, these applications were believed to be known as Application Serial No.
12 09/904,425 ("the '425 application"), filed on July 12, 2001 for inventors Cindy Kohanek and
13 Gary Babb, entitled "Linearity Measuring Apparatus for Wafer Orientation Flat," and
14 Application Serial No. 09/718,659 ("the '659 application"), filed on November 22, 2000 for
15 inventors Kazuhiro Harada, Hisashi Furuya, Jur Furukawa, Ken Nakamira, Niroyuki Shiraki,
16 and Yukio Muroi, entitled "Silicon Water and Method for Manufacturing the Same;"

17 4. Among the database systems and business records used by Reed Smith to
18 organize and manage its legal work on behalf of its many clients, especially on the patent
19 side of the firm's practice, is a system known as "PATTSY." "PATTSY" is a commercially
20 available database system that has been used by Reed Smith for about six years, especially
21 for firm work before the U.S. PTO which involves many due dates and other data involved in
22 this specialized aspect of the firm's many practices. A general discussion of a generic

EXHIBIT 3

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 3 of 9

1 "PATTSY" system apparently offered by O P Solutions can be found at
2 <http://www.opsolutions.com/>;

3 5. I personally looked for data concerning the '425 and '659 applications in
4 Reed Smith's "PATTSY" database docketing system. I found such data in "PATTSY," which
5 is discussed in more detail later in this Declaration;

6 6. In addition to the Reed Smith "PATTSY" database system, "paper files" for
7 the '425 and '659 applications were opened and maintained at Reed Smith during the time
8 period those applications were in the possession, custody, and control of Reed Smith (which
9 is no longer the case), as was and is still done as part of the basic practice at Reed Smith
10 for all such patent "paper files." The physical makeup of the Reed Smith patent "paper files"
11 is and remains of the type that is relatively standard in most law firms which handle patent
12 prosecution matters, among other things, in that the physical file is basically a three-fold file,
13 i.e., a left-hand section, a middle section, and a right-hand section, which generally contains
14 papers relating to the underlying patent application, including papers to/from the PTO and
15 to/from the client;

16 7. On or about January 8, 2009, I personally ran database inquiries in the Reed
17 Smith "PATTSY" database system relative to the '425 and '659 applications, and then printed
18 copies of the results from those inquiries;

19 8. True and correct PDF copies of the foregoing printouts are cut-and-pasted
20 into the next two pages of my Declaration. Further, separate and clearer copies of these
21 printouts are attached to this Declaration as Ex. 4 and 5, respectively;

22 //

23 //

EXHIBIT 3

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 4 of 9

1 //

2 //

3 //

4

REED SMITH "PATTSY" RUN FOR '425 APPLICATION

EXHIBIT 3

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 5 of 9

YOUR	BU-5072		PRINTED ON:	01/28/2003
COUNTRY	US UNITED STATES		TITLE	LINEARITY MEASURING APPARATUS FOR WAFER ORIENTATION FLAT
NEWCOM	OTR	SERIAL#	00004.425	MAE
RELATED	N/A	PATENT#		FILE
TYPE	UTL	STATUS	TRANSFER	PUBL
CLIENT	SU	SUGA PAT OFF. 7 500377	1	ISSUE
AGENT			AREF	1ST
				IPC

ID	O	ACTION	DATE	DATE IN	DATE	EXTNS	FINAL	EXT	RESPONSE	CALL UP	1	2	3	P
N		AWAITING MPDA	07/12/2001	3/M	05/12/2001		05/12/2001	0	05/12/2001		1/M	Y	Y	Y
N		DECLARATION DUE	05/28/2001	3/M	05/28/2001	4/1	05/28/2001	4	02/13/2002		1/M	Y	Y	Y
N		FILING RECEIPT	02/13/2002	2/M	04/13/2002		04/13/2002	0	03/25/2002		1/M	Y	Y	Y
N		JUDICIAL DUE DATE	07/03/2002	3/M	05/03/2002	3/1	01/03/2003	3	01/01/2000		1/M	Y	Y	Y
N		AMEND PUBLICATION	12/18/2001	2/M	02/18/2002		02/18/2002	0	11/21/2003		1/M	Y	Y	Y
N		AS NOTICE/PETITION	05/28/2001	2/M	05/28/2001		05/28/2001	0	01/02/2000		1/M	Y	Y	Y
NOTICE OF ABANDONMENT RECD DATED 05/28/2003 BUT THE PTO HAS NOT RECD THE PETITION FILED 05/28/2003														
SC	N	STATUS CHECK	05/28/2001	3/M	05/28/2001		05/28/2001	0	01/02/2000		1/M	Y	Y	Y
93	N	CASE TRANSFERRED	01/02/2002	0/M	01/02/2002		01/02/2002	0	01/02/2002		0/M	Y	Y	Y

Transferred to J.E. Goldberg & Duane Morris LLP, 1340 Broadway, New York, NY 10036-4086 JG Direct: 212-692-1025 (Ext 212-692-1000)
Fax: 212-692-1025

INVENTORS	ASSIGNEES	TERMS
CINDY KORLANDK	MITSUBISHI MAT. SILICON CORP	5003577 20035
GARY BARR	Mitsubishi Silicon America Corporation	

REFERENCE#	ENTRY	SERIAL#	FILED	TITLE/DESCRIPTION	TYPE
	JP	2001-189702	05/18/2001		APPL

USER DEFINABLE FIELDS		PATENT FIELDS	
STAT	Pending	SMALL ENTITY	NO
PRIP	2001-189702	NO CLAIMS	ART UNIT 2855
POLY	US-2002-0135113-A1	TOTAL CLAIMS	CONFIRM 1776
		EXAMINER	
P041330900 ENTERED 01/21/1980 MODIFIED 01/01/2008 2 BY RMT		ATTORNEYS JG / N/A / N/A	
NOTES			
PD Submit w/MP 13FEB02			

1 //

2 //

3 //

EXHIBIT 3

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 6 of 9

REED SMITH "PATTSY" RUN FOR '659 APPLICATION

YOUR#	SU-5020			FILED ON:	01/02/2003
COUNTRY	US	UNITED STATES	TITLE	SILICON WAFER AND METHOD FOR MANUFACTURING THE SAME	
NEWCON	OTI	SERIAL#	09/716,458	PRIO#	N/A
RELATED	N/A	PATENT#		FILE	11/23/2002
TYPE	UTL	STATUS	TRANSFER	PUBL	
CLIENT	SU	SILICA PAT OFF / \$50577	1	ISSUE	
AGENT			ARLT	1ST	
				TRD	Y: 01/02/2003

ID	O	ACTION	DATE	DUE IN	DUE	EXTNS	FINAL EXT	RESPONSE	CALL UP	1	2	P
N		FILING RECEIPT	11/22/2002	3/W	01/22/2001		01/22/2001	0	04/02/2001	1M	Y	Y
N		ASSIGN RCD	11/22/2002	3/W	02/22/2001		02/22/2001	0	02/27/2001	1M	Y	Y
N		Information Disclosure	11/22/2002	3/W	02/22/2001		02/22/2001	0	10/02/2002	1M	Y	Y
Filed W/Amend on 20CT02												
N		LETTER TO PTO	06/22/2001	6/W	02/22/2002		02/22/2002	0	11/22/2001	2M	Y	Y
N		IMON DUE DATE	06/08/2002	3/W	08/08/2002	3 F	11/06/2002	3	10/02/2002	1M	Y	Y
AMENDMENT PURSUANT TO 37 CFR 1.48, Deleting the following inv's: 3) Jun Furukawa, 4) Ken Nakajima and 5) Hiroyuki Shiraki. Filed 20CT02												
N		NOTICE OF APPEAL	12/31/2002	3/W	03/31/2003	3 F	06/30/2003	3	01/02/2008	0M	Y	Y
(2nd) AMDT filed 20JUN03 w/ADL 2 MONS EXT. "W" ADVISORY ACTION REC'D DATED 20MAY2003 "W" AMDT filed 20APR03												
N		FINAL OFFICE ACTION	12/31/2002	3/W	03/31/2003	3 F	06/30/2003	1	04/02/2003	1M	Y	Y
N		STATUS CHECK (9Months)	10/02/2003	6/W	04/02/2003		04/02/2003	0	01/07/2003	2M	Y	Y
N		CALL EXAMINER	06/20/2003	10/D	06/20/2003		06/20/2003	0	01/02/2008	0D	Y	Y
(2nd) AMDT filed 20JUN03 w/ADL 2 MONS EXT. "W" ADVISORY ACTION REC'D DATED 20MAY2003 "W" AMDT filed 20APR03												
N		CASE TRANSFERRED	01/02/2003	0/W	01/02/2008		01/02/2008	0	01/02/2008	0M	Y	Y

INVENTORS	ASSIGNEE	TERMS
KAZUHIRO HARADA	AMT2008SH MATERIAL SILICON	500577-20019
HIROSHI FURUKAWA		
JUN FURUKAWA		
KEN NAKAJIMA		
HIROYUKI SHIRAKI		
YUKIO MUROI		

USER-DEFINABLE FIELDS		PATENT FIELDS	
STAT	Pending	SMALL ENTITY	No
PRIO		NO CLAIMS	
PBL		TOTAL CLAIMS	2: CONFIRM
		EXAMINER	STEPHEN J. STEIN
PD#121USDC	ENTERED 01/01/2003	MODIFIED	01/04/2003 1 BY PRUIT
ATTORNEYS	JG	/	N/A
AMENDMENT PURSUANT TO 37 CFR 1.48, Deleting the following inv's: 3) Jun Furukawa, 4) Ken Nakajima and 5) Hiroyuki Shiraki. Filed 20CT02			

EXHIBIT 3

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 7 of 9

1 9. I provide in the following paragraphs of this Declaration a general description
2 of some of the data and data entries shown on the foregoing printed copies of the database
3 inquires I ran in the Reed Smith "PATTY" database system relative to the '425 and '659
4 applications;

5 10. Regarding Ex. 4 concerning the '425 application:

6 a. The printout shown as Ex. 4 indicates that a U.S. PTO Office Action
7 was issued on July 3, 2002. The printout also indicates that a Response was due
8 October 3, 2002, extendable to January 3, 2003. The printout is unclear as to
9 whether a Response was filed, as the response date entered is January 1, 1900;

10 b. The printout indicates that a Notice of Abandonment was issued
11 March 26, 2003 and docketed for a 2 month response. The printout also includes a
12 note associated with this entry which refers to a Petition filed February 6, 2003, but
13 no reference to the Petition is elsewhere in this printout;

14 c. The printout indicates that attorney "JG" was assigned to this case
15 (see "Attorneys" field towards the bottom of the printout). The second and third slots
16 in the Attorney field show "N/A," which means "not applicable;" and

17 d. The printout includes entries for AB (U.S. PTO Board of Appeals and
18 Interferences) Notice/Petition (due May 26, 2003) and Status Check (due September
19 26, 2003), which were left open and overdue. Both were closed on January 2, 2008;

20 11. Regarding Ex. 5 concerning the '659 application:

21 a. The printout shown as Ex. 5 indicates that a U.S. PTO Final Office
22 Action was issued on December 31, 2002. The printout also indicates that a

EXHIBIT 3

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 8 of 9

1 Response was due March 31, 2003, extendable to June 30, 2003. The printout also
2 indicates that a Response was filed on April 30, 2003;

3 b. The printout indicates that an Advisory Action was issued on May 20,
4 2003 according to the PATTSY "notes" for the Notice of Appeal entry, and a second
5 Amendment filed in response on June 20, 2003 with the necessary extension;

6 c. The printout includes a "Call Examiner" entry that was manually
7 entered into PATTSY, as there is no two-letter code in the second box to its left. It
8 was given a base date of June 20, 2003, the same date the second Amendment was
9 filed, and docketed for response 10 days later, meaning the deadline was June 30,
10 2003, the six-month deadline from the Final Office Action. Additionally, the printout
11 includes an entry with a "call-up" date of 5 days, meaning that the entry should start
12 appearing on the attorney's docket 5 days before the deadline (i.e., June 25, 2003);

13 d. The printout indicates that attorney "JG" was assigned to this case
14 (see "Attorneys" field towards the bottom of the printout). The second and third slots
15 in the Attorneys field show "N/A," which means "not applicable;" and

16 e. The printout includes entries for Notice of Appeal and Call Examiner
17 which were left open and overdue. Both indicate deadlines of June 30, 2003, but
18 were only closed on January 2, 2008;

19 II. CONCLUSION

20 12. In signing this declaration, I understand that the declaration will be filed as
21 evidence in support of a Petition to Revive the '425 and '659 applications; and

22 13. I declare that all statements made herein of my own knowledge are true, and
23 that all statements made on information and belief are believed to be true. I further declare

EXHIBIT 3

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 9 of 9

1 that these statements were made with the knowledge and understanding that willful false
2 statements and the like so made are punishable by fine, or imprisonment or both, under
3 Section 1001 of Title 18 of the United States Code, and that such willful false statements
4 may jeopardize the validity of any U.S. patents issued from such applications.
5

Respectfully submitted,

Dated: 27 Jan 09



RUTH MONTALVO

EXHIBIT 4

YOUR# SU-5072

PRINTED ON: 01/08/2009

COUNTRY	US	UNITED STATES		TITLE		PRIOR	06/18/2001	
NEW/CON	OTH	SERIAL#	09/904,425	LINEARITY MEASURING APPARATUS FOR WAFER ORIENTATION FLAT		MAIL		
RELATED	N/A	PATENT#				FILE	07/12/2001	
TYPE	UTL	STATUS	TRANSFER			PUBL	12/19/2002	
CLIENT	SU	SUDA PAT.OFF. / 500577		1	CREF	ML6227US	ISSUE	
AGENT					AREF		1ST	
							TFD	Y 01/02/2008

[illegible]

INVENTORS	ASSIGNEES	TERMS
CINDY KOHANEK	MITSUBISHI MAT. SILICON CORP.	500577.20035
GARY BABB	Mitsubishi Silicon America Corporation	

PRIOR APPLICATIONS					
REFERENCE#	CNTRY	SERIAL#	FILED	TITLE / DESCRIPTION	TYPE
	JP	2001-183702	06/18/2001		APPL

USER-DEFINABLE FIELDS		PATENT FIELDS			
STAT	Pending	SMALL ENTITY	No	PUBL #	
PRI#	2001-183702	IND CLAIMS		ART UNIT	2859
PBL#	US-2002-0189118-A1	TOTAL CLAIMS		CONFIRM#	1776
				EXAMINER	

P04133US00	ENTERED	01/01/1980	MODIFIED	01/03/2008 2	BY	RMT	ATTORNEYS	JG	/	N/A	/	N/A
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NOTES
PD Subm w/MP 13FEB02

EXHIBIT 5

YOUR# SU-5020

PRINTED ON: 01/08/2009

COUNTRY	US	UNITED STATES	TITLE		PRIOR	
NEW/CON	OTH	SERIAL#	09/718,659	SILICON WAFER AND METHOD FOR MANUFACTURING THE SAME	MAIL	
RELATED	N/A	PATENT#			FILE	11/22/2000
TYPE	UTL	STATUS	TRANSFER		PUBL	
CLIENT	SU	SUDA PAT.OFF. / 500577	1		ISSUE	
AGENT				CREF		1ST
				AREF		TFD
						Y 01/02/2008

ID	O	ACTION	BASE	DUE IN	DUE	EXTNS	FINAL	EXT	RESPONSE	CALL UP	1	2	P
	N	FILING RECEIPT	11/22/2000	2M	01/22/2001		01/22/2001	0	04/02/2001	1M	Y	Y	Y
	N	ASSIGN RCVD	11/22/2000	3M	02/22/2001		02/22/2001	0	02/27/2001	1M	Y	Y	Y
	N	Information Disclosu	11/22/2000	3M	02/22/2001		02/22/2001	0	10/02/2002	1M	Y	Y	Y
filed w/Amdt on 2OCT02													
	N	LETTER TO PTO	08/22/2001	6M	02/22/2002		02/22/2002	0	11/22/2001	2M	Y	Y	Y
	N	3MON DUE DATE	05/08/2002	3M	08/08/2002	31	11/08/2002	3	10/02/2002	1M	Y	Y	Y
AMENDMENT PURSUANT TO 37 CFR 1.48, Deleting the following inv's: 3) Jun Furukawa, 4) Ken Nakajima and 5) Hiroyuki Shiraki filed 2OCT02													
NA	N	NOTICE OF APPEAL	12/31/2002	3M	03/31/2003	31	06/30/2003	3	01/02/2008	0M	Y	Y	Y
(2nd) AMDT filed 20JUN03 w/ADD'L 2 MONS EXT. *//* ADVISORY ACTION REC'D DATED 20MAY2003 *//* AMDT filed 30APR03													
R3	N	FINAL OFFICE ACTION	12/31/2002	3M	03/31/2003	31	06/30/2003	1	04/30/2003	1M	Y	Y	Y
	N	STATUS CHECK (6Mons)	10/02/2002	6M	04/02/2003		04/02/2003	0	01/07/2003	2M	Y	Y	Y
	N	CALL EXAMINER	06/20/2003	10D	06/30/2003		06/30/2003	0	01/02/2008	5D	Y	Y	Y
(2nd) AMDT filed 20JUN03 w/ADD'L 2 MONS EXT. *//* ADVISORY ACTION REC'D DATED 20MAY2003 *//* AMDT filed 30APR03													
99	N	CASE TRANSFERRED	01/02/2008	0M	01/02/2008		01/02/2008	0	01/02/2008	0M	Y	Y	Y
2JAN08 Transferred to J.E. Goldberg @ Duane Morris LLP, 1540 Broadway, New York, NY 10036-4086 JG Direct: 212-692-1025 (firm 212-692-1000 / fax 212-692-1020)													

INVENTORS KAZUHIRO HARADA, HISASHI FURUYA, JUN FURUKAWA, KEN NAKAJIMA, HIROYUKI SHIRAKI & YUKIO MUROI	ASSIGNEES MITSUBISHI MATERIAL SILICON..	TERMS 500577.20019
--	---	------------------------------

USER-DEFINABLE FIELDS STAT Pending PRI# PBL#	PATENT FIELDS SMALL ENTITY No IND CLAIMS TOTAL CLAIMS 2 PUBL # ART UNIT 1775 CONFIRM# 2444 EXAMINER STEPHEN J. STEIN
--	--

P04121US00 ENTERED 01/01/1980 MODIFIED 01/04/2008 1 BY RMT ATTORNEYS JG / N/A / N/A

NOTES

AMENDMENT PURSUANT TO 37 CFR 1.48, Deleting the following inv's: 3) Jun Furukawa, 4) Ken Nakajima and 5) Hiroyuki Shiraki filed 2OCT02

EXHIBIT 6

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 1 of 10

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE OFFICE OF PETITIONS

In re Patent Application of:
Cindy KOHANEK et al.

Customer No.: 07278

Application No.: 09/904,425

Confirmation No.: 1776

Filed: July 12, 2001

Art Unit: 2859

For: LINEARITY MEASURING APPARATUS
FOR WAFER ORIENTATION FLAT

Examiner: G. Bradley Bennett

Attorney Docket No.: 21223/0211061-US0

Abandoned: January 4, 2003

In re Patent Application of:
Kazuhiro HARADA et al.

Customer No.: 07278

Application No.: 09/718,659

Confirmation No.: 2444

Filed: November 22, 2000

Art Unit: 1775

For: SILICON WAFER AND METHOD FOR
MANUFACTURING THE SAME

Examiner: Stephen J. Stein

Attorney Docket No.: 21233/0211060-US0

Abandoned: July 1, 2003

DECLARATION OF HIROYUKI TAKEUCHI

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

I, **HIROYUKI TAKEUCHI**, hereby declare and state as follows:

I. **PERSONAL AND PROFESSIONAL BACKGROUND**

1. I am a citizen of Japan and am more than twenty-one (21) years of age;

EXHIBIT 6

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 2 of 10

2. I am presently the General Manager of the Intellectual Property Department, Production & Technology Division, of SUMCO Corporation ("SUMCO IP Department"), Seavans North, 1-2-1 Shibaura, Minato-ku, Tokyo 105-8634, Japan (Phone: +81-3-5444-3958). My email address is hirotake@sumcosi.com;

3. I have held the position of General Manager of the SUMCO IP Department since April 2008. I have been employed by SUMCO Corporation ("SUMCO") (and its predecessor companies under the general family name of Mitsubishi Materials Silicon Corporation ("MSIL")), since about 1975. For sake of simplicity, I shall refer to SUMCO and its predecessor companies in the remainder of this Declaration generally and collectively as SUMCO;

4. SUMCO is a very large, multi-national company headquartered in Japan, with offices, factories, laboratories, and other facilities throughout Japan and around the world, that enables the company to operate through many subsidiary and other related companies. A major component of SUMCO's business involves wide and varied Intellectual Property ("IP") work and issues, including many patent and trademark matters that arise before the Japan Patent Office ("JPO") and other foreign patent offices around the world;

5. Accordingly, SUMCO has a large and varied cadre of IP professionals on which it relies, both within the company and outside. The SUMCO IP Department, of which I am the General Manager, manages and coordinates these activities in our Japan Headquarters for the entire company. At present, the SUMCO IP Department has about 16 full-time personnel in Japan, including Mr. Toshinobu Miura, Manager of the Department, and Mr. Hiroyuki Hasegawa, our Assistant Manager. In this manner, all IP issues of SUMCO are managed and coordinated from my Department in Japan wherever and

EXHIBIT 6

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 3 of 10

1 however those issues may arise within the company, including its activities and interests in
2 China, Europe, North America, and South America;

3 6. As a result of these broad and varied responsibilities, especially on the
4 technical and scientific side, the SUMCO IP Department does business with many different
5 and skilled patent attorneys and agents in Japan and elsewhere in support of these critically
6 important company activities;

7 7. One of these outside patent attorneys in Japan is Mr. Masayoshi Suda;

8 II. THE SUDA PATENT OFFICE

9 8. For many years starting in the mid-1990's, SUMCO has had a continuous
10 and very satisfactory business relationship with Mr. Suda, the founder of the Japanese
11 Patent Law Firm known as the SUDA PATENT OFFICE ("SPO"), whose present address is
12 Oak Ikebukuro Bldg 7F.21-11, Higashi-Ikebukuro 1-chome, Toshima-ku, Tokyo 170-0013
13 Japan;

14 9. During these many years, SUMCO has entrusted Mr. Suda and SPO with
15 significant IP work, including many patent and trademark matters before the JPO and other
16 foreign patent offices around the world. For this latter work, which has grown considerably
17 over time, SUMCO has generally relied upon Mr. Suda to recommend for SUMCO's
18 approval foreign patent attorneys to work with SPO on behalf of SUMCO in IP matters within
19 their individual countries;

20 10. As one example, SUMCO approved long ago to have a Mr. Jules Goldberg, a
21 patent attorney in the U.S., represent SUMCO in IP matters concerning the U.S. through
22 SPO and Mr. Suda. As part of this relationship, SUMCO has had the opportunity to meet

EXHIBIT 6

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 4 of 10

1 three times over the years with Mr. Goldberg as his general travels have brought him to
2 Japan to visit with SUMCO and his other Asian-based clients;

3 11. Among the matters entrusted over the years to Mr. Goldberg through SPO for
4 SUMCO IP work was the preparation, filing, and prosecution of two specific U.S. patent
5 applications, U.S. Application Serial No. 09/904,425 ("the '425 application"), filed on July 12,
6 2001 for inventors Cindy Kohanek and Gary Babb, entitled "Linearity Measuring Apparatus
7 for Wafer Orientation Flat," and Application Serial No. 09/718,659 ("the '659 application"),
8 filed on November 22, 2000 for inventors Kazuhiro Harada, Hisashi Furuya, Jun Furukawa,
9 Ken Nakajima, Hiroyuki Shiraki, and Yukio Muroi, entitled "Silicon Water and Method for
10 Manufacturing the Same;"

11 12. The present assignees of the '425 application are SUMCO Corporation and
12 the SUMCO PHOENIX Corporation ("SPX"), a SUMCO subsidiary located in the U.S.
13 SUMCO Corporation is the sole assignee of the '659 application. Ultimate responsibility for
14 the prosecution of these two U.S. patent applications, despite the joint ownership of SPX in
15 the '425 application, was and remains with the SUMCO IP Department in Japan of which I
16 am the General Manager;

17 13. Both the '425 application and the '659 application were filed in the U.S. PTO
18 by Mr. Goldberg through the auspices of SPO;

19 14. As I stated previously, the relationship between SUMCO and Mr. Suda has
20 been an extremely satisfactory one that has resulted, in large part, by the personal and
21 reliable way Mr. Suda has conducted business with SUMCO. Mr. Suda has made a point
22 over the years to visit SUMCO's Japanese Institutes and factories several times each year,
23 and more, to interview and meet SUMCO inventors and staff members of the SUMCO IP

EXHIBIT 6

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 5 of 10

1 Department. These inventor interviews have been usually directed to invention proposals
2 and memoranda about the proposals for the potential filing of Japanese patent applications
3 in the JPO. If these proposals are worthy of filing in the eyes of SUMCO, detailed examples
4 and comparative example data from the inventors are eventually gathered by Mr. Suda, and
5 his SPO assistants, to help prepare specifications and drawings for the Japanese
6 applications, which are then reviewed and approved by the SUMCO inventors and the
7 SUMCO IP Department;

8 15. It has been the experience of SUMCO, with its extensive dealing with Mr.
9 Suda and SPO, that whenever JPO office actions are received by SPO in SUMCO patent
10 applications, SPO prepares and forwards to the SUMCO IP Department detailed comments
11 about those office actions, usually within about two weeks of their receipt, along with
12 proposed claims / amendments, if necessary. In this manner, the SUMCO IP Department
13 understands that SPO has tried to set a deadline for receipt of the SUMCO reply to its
14 comments and, in those few instances where the SUMCO IP Department does not timely
15 send those replies, SPO sends a reminder to SUMCO until the comments are received;

16 16. With regard to foreign office actions (including those from the U.S. PTO), the
17 SUMCO IP Department has observed that SPO usually translates into English our
18 Department's Japanese comments to SPO on those actions, and then prepares and sends
19 those English instructions to the foreign patent attorneys in light of those comments --
20 usually two weeks before the actual due date of a response to the office action;

21 17. In the general timeframe of 1994 through 2003, SPO corresponded with the
22 SUMCO IP Department mostly by facsimile and mail, and partially by e-mail, in the following
23 manner:

EXHIBIT 6

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 6 of 10

1 a. SPO drafted documents to be filed with the JPO or foreign patent
2 offices were sent to the SUMCO IP Department by facsimile in accordance
3 with the applicable due dates;

4
5 b. the SUMCO-corrected draft documents were returned to SPO by
6 facsimile;

7
8 c. SPO-revised draft documents were sent to the SUMCO IP
9 Department by facsimile within a couple of days of receipt of the SUMCO
10 corrections;

11
12 d. SUMCO's instructions for filing of the final documents with the JPO or
13 foreign patent offices were sent to SPO by facsimile or e-mail by the
14 deadline set by SPO; and

15
16 e. the filed documents were sent to the SUMCO IP Department by mail
17 within a couple of days after their actual filing;

18
19 18. In the general time period of later 2003 through early 2007, SPO
20 corresponded with the SUMCO IP Department mostly by e-mail and regular mail, and
21 partially by facsimile, in the same manner as described in the preceding paragraph of this
22 Declaration, except that email was generally used other than facsimile (or both methods
23 were used), but for subparagraph (e) where mail was still generally used;

24 19. In the general time period of early 2007 through the end of 2008, SPO
25 corresponded with the SUMCO IP Department mostly by Virtual Private Network (VPN) and
26 e-mail, and partially by regular mail, in the general manner as described previously;

27 20. Although personnel at both SPO and the SUMCO IP Department have
28 changed over the years, in the general time period of 1994 through most of 2002, Mr.
29 Hayashi, Mr. Masuda, and Ms. Nagao were the main personnel from SUMCO'S IP
30 Department communicating with Mr. Suda and Ms. Yamada of SPO. After this general time
31 period through most of 2003, Mr. Masuda, Mr. Sudo (a different person than SPO's Mr.
32 Suda who just happens to have a similar family name), Ms. Nagao, and Ms. Kon were the

EXHIBIT 6

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 7 of 10

1 main people from my Department communicating with Mr. Suda, and Ms. Yamada from
2 SPO. After this time period through early 2008, mainly Mr. Sudo and Ms. Kon from SUMCO
3 were communicating with SPO's Mr. Suda, Ms. Yamada, and Mr. Fusejima. And, finally
4 from this last period through 2008, it was Mr. Hasegawa and Ms. Kon from the SUMCO IP
5 Department with SPO's Mr. Suda, Mr. Fusejima, and Ms. Imai;

6 21. With particular regard to both the '425 and '659 applications, most of the main
7 direct communications concerning these applications were conducted by and through
8 SUMCO's Mr. Hayashi and Mr. Masuda, and SPO's Mr. Suda;

9 22. For example with respect to the '425 application, in the time period following
10 the Non-Final Office Action mailed from the U.S. PTO on July 3, 2002, there were at least
11 seven back-and-forth communications between SPO and the SUMCO IP Department;

12 23. For example with respect to the '659 application, in the time period following
13 the Final Office Action mailed from the U.S. PTO on December 31, 2002 through and after
14 the Proposed Amendment of June 20, 2003 was filed in the U.S. PTO in response to the
15 Advisory Action of May 20, 2003, there were at least eight back-and-forth communications
16 between SPO and the SUMCO IP Department;

17 V. DISCOVERY OF THE ABANDONMENTS

18 24. On or about November 27, 2008, Mr. Suda made an appointment for
19 December 1, 2008 to meet with the SUMCO IP Department to discuss Mr. Goldberg's recent
20 performance and reliability, especially in light of the latest notice received by Mr. Suda from
21 Mr. Goldberg that Mr. Goldberg would be departing his third U.S. law firm within a three-year
22 period at the end of 2008 and, as a result, Mr. Goldberg had asked that for SPO clients,

EXHIBIT 6

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 8 of 10

1 including SUMCO, who had pending U.S. patent applications with Mr. Goldberg, those
2 applications be transferred to Mr. Goldberg's care at his new law firm;

3 25. The SUMCO IP Department met with Mr. Suda on December 1st and, at that
4 meeting, decided to consider a U.S. law firm other than Mr. Goldberg's then present law firm
5 for the SUMCO work previously entrusted to Mr. Goldberg;

6 26. Mr. Suda again returned to the SUMCO IP Department on December 12,
7 2008, when he visited with me, Mr. Miura (the Manager of the Department), and Mr.
8 Hasegawa (our Assistant Manager). During this meeting, Mr. Suda reported to all three of
9 us with the greatest and most sincerest of apologies that Mr. Suda was informed by Mr.
10 Goldberg, for the first time, that both the '425 and '659 patent applications had become
11 abandoned. SUMCO was very upset with this information as the SUMCO IP Department
12 had no previous knowledge whatsoever of the abandonments. I made clear to Mr. Suda at
13 that moment that he should make his strongest efforts to have both patent applications
14 revived by the U.S. PTO, which were not abandoned intentionally or knowingly by the
15 SUMCO IP Department, or by myself, Mr. Muira, or Mr. Hasegawa;

16 27. Upon looking into this matter further from SUMCO's perspective, I was not
17 able to determine why the SUMCO IP Department did not contact SPO at any time about
18 the '425 or '659 applications after the last communications the SUMCO IP Department
19 received from SPO concerning the applications, as mentioned in paragraphs 22 and 23 of
20 this Declaration, until the December 12, 2008 date when Mr. Suda notified the SUMCO
21 Patent Department of the abandonments. I can state only the fact that no such contact in
22 this regard was made during this extended time period and that, in all likelihood, the reason
23 for this lack of contact was that the SUMCO IP Department relied upon its many years of

EXHIBIT 6

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 9 of 10

1 experience and confidence with SPO and Mr. Suda to be contacted in a timely fashion about
2 matters of importance concerning the SUMCO IP work entrusted to Mr. Suda and SPO;

3 28. Nonetheless, I can state unequivocally and without any reservation
4 whatsoever that, during the entire time both of the '425 and the '659 applications were
5 believed by the SUMCO IP Department to be pending before the U.S. PTO, including the
6 time period from the last communications the SUMCO IP Department received from SPO
7 concerning the applications, as mentioned in paragraphs 22 and 23 of this Declaration, until
8 the December 12, 2008 date when Mr. Suda notified our Department of the abandonments,
9 the SUMCO IP Department did not intend either application to go abandoned, nor did the
10 SUMCO IP Department have knowledge or reason to believe either application had gone
11 abandoned;

12 VII. CONCLUSION

13 29. In signing this Declaration, I understand that the Declaration will be filed as
14 evidence in support of a Petition to Revive for the '425 and '659 applications; and

15 30. I declare that all statements made herein of my own knowledge are true, and
16 that all statements made on information and belief are believed to be true. I further declare
17 that these statements were made with the knowledge and understanding that willful false
18 statements and the like so made are punishable by fine, or imprisonment or both, under
19 Section 1001 of Title 18 of the United States Code, and that such willful false statements
20 may jeopardize the validity of any U.S. patents issued from such applications.
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EXHIBIT 6

In Support of Revival Petition
Under 37 CFR 1.137(b)
Page 10 of 10

Respectfully submitted,

Dated: Jan. 29. 2009

Hiroyuki Takeuchi
HIROYUKI TAKEUCHI

1